IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1237 of 2004
Date of Decision: December 07, 2006

Mrs.Kamlesh Kumari wife of Shri Krishan Kumar, resident of House No. B-XVII/169, Bania Street, Subhash Chowk, Kapurthala

.....Petitioner

VERSUS

1.State of Punjab through its Secretary, Education Department (Schools), Civil Secretariat, Chandigarh.

2.The Managing Committee, Mandi Harding Ganj High School, Kapurthala through its President.

3.Mandi Harding Ganj (G.High School),Kapurthala through its Manager.

4.The District Education Officer (Schools), Kapurthala.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Rajinder Sharma,Advocate
for the petitioner.

Mrs.Charu Tuli, Senior Deputy Advocate General,
Punjab for respondents No.1 and 4.

Dr.ML Sachdeva, Advocate
for respondents No.2 and 3.

R S MADAN, J.

The challenge herein this Civil Writ Petition under Articles 226/227 of the Constitution of India is the order dated 22-10-2003

vide which respondent No.4 has declined the pension to the petitioner under the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992 as the same is illegal and wrong.

In brief, the facts of the case are that the petitioner joined as Mistress on 18-5-1968 with the Hindu Putri Pathshala Girls High School (Recognized), Kapurthala, a privately managed recognized aided school in Punjab. In the year 1976, petitioner applied for the post of Headmistress under respondent No.3 with prior approval of its previous employer. She was selected and appointed with respondent No.3. She joined the post of Headmistress on 1-6-1976. The contributory provident fund account of the petitioner from the previous school was transferred to respondent No.3, in other words, the contributory provident fund of the petitioner in the previous school continued as such in the subsequent school and there was no break in service of the petitioner. During her posting as Headmistress in the aforesaid school in the month of June, 1985, the petitioner intercepted certain objectionable letters written by one Vipin Kumar son of Bal Krishan, as Bal Krishan was the most influential member of the School Managing Committee so with his influence the services of the petitioner were illegally terminated by the Managing Committee of the school vide order dated 17-9-1986. She challenged her termination order by filing the Civil Writ Petition in the High Court of Punjab and Haryana., which quashed the order of the termination with an observation that the same was illegal and passed with malafide intention.

On the basis of the judgment and order dated 9-12-1997 passed by the High Court, the petitioner in the month of January, 1998 went to the school to submit her joining report but she was not allowed to enter

the school premises. In the meantime, the Management filed LPA No.94/98 and the same was also dismissed vide order dated 9-2-1998. After the dismissal of the LPA, respondent No.3 allowed the petitioner to join her duties on 10-2-1998. The petitioner was informed by respondents No.2 and 3 that her joining was accepted to avoid contempt of court's order, otherwise they had already filed Special Leave Petition in the Hon'ble Supreme Court and they would not like to see the petitioner in their school. The said Special Leave Petition was dismissed by the Hon'ble Supreme Court..

After joining her duties, she requested respondents No.2 and 3 to fix her salary and to give her arrears of pay in accordance with Rule 15, which is reproduced as under:-

> *"15.Allowance on reinstatement (Section 3,5 and 15):- In case a suspended employee is exonerated of the charges levelled against him by the Managing Committee or is reinstated in appeal or otherwise he shall be entitled to full pay and allowances to which he would have been entitled had he not been suspended less subsistence allowance already paid to him under rule 14 by the Managing Committee."*

The petitioner also represented the matter to respondent No.4. Respondent No.4 reprimanded respondent No.3 vide letter dated 22-6-1998 and directed to respondent No.3 to send the papers after fixing the pay of the petitioner. The copy of the letter dated 22-6-1998 is attached as Annexure P1. This was followed by numerous representations from the petitioner but respondents till date did not fix the pay of the petitioner.

The petitioner was litigating since year 1985 when her

services were terminated by respondents No.2 and 3. During the period of her termination, respondent No.1 issued notification dated 10-2-1992 regarding retirement benefit scheme to the employees of privately managed aided schools. The scheme was notified as "Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme 1992" and was published on 10-2-1992. The scheme aforesaid came into force w.e.f. 1-2-1987. In accordance with this scheme, the benefit of pension and other retiral benefits was made applicable to the employees of "Punjab Privately Managed Recognized Aided Schools", provided an option was exercised under Clause 4 of the above mentioned Scheme.

On 7-4-1999, a letter dated 6-4-1999 was received by the petitioner from respondent No.3 informing her to give her option regarding pension latest by 8-4-1999. This letter was written to comply with interim order dated 22-2-1999 passed by the Hon'ble Supreme Court in Special Leave Petition filed by the respondent-Management. The interim order passed by the Hon'ble Supreme Court is reproduced as under:-

> *"To be placed on 16th April,1999 for final disposal. In the meantime, the respondent shall be paid salary from the date she joined her duties pursuant to the High Court's orders and the petitioner will go on paying her accordingly all future salaries. It is made clear that whatever is being paid to her will be purely on account and without prejudice to the rights and contentions of both the sides."*

On the same day, the petitioner informed respondent No.3 to inform her about her pay after fixing the same and to tell her about the total amount of provident fund, so that she could exercise her option

regarding pension. The true copy of the letter dated 6-4-1999 is Annexure P2.

From the date of her joining i.e. 10-2-1998, no salary was paid to her and it was on 6-4-1999 that salary of the petitioner from 10-2-1998 to 31-3-1999 was released. This salary was released without giving the benefit of increments etc. earned by the petitioner from the date of her termination till her joining, as was required under Rule 15 of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979.

Vide letter dated 19-4-1999, respondent No.3 informed the petitioner to exercise option regarding pension but did not disclose anything regarding the queries dated 7-4-1999 put by the petitioner with regard to her pay fixation and provident fund. This letter was duly replied by the petitioner on 21-4-1999. True copies of the letters have been appended as Annexures P3 and P4 respectively.

Against the order dated 9-2-1998 passed in the LPA, the respondent-Management preferred Special Leave Petition in the Hon'ble Supreme Court and the same was disposed of vide order dated 29-4-1999 in terms of the following order:-

> *"We have heard learned counsel for the parties in this Special Leave Petition. In our view, in the peculiar facts and circumstances of the case as recorded by learned Single Judge and as confirmed by the Division Bench of the High Court, no case for our interference arises in the present proceedings. However, the order of the High Court will operate subject to the following modifications:*
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> *(i)From the date of the order of the learned Single*

Judge i.e. 9-12-1997 till the date of superannuation of respondent No.1 as per Rules and Regulations i.e. 30-9-1999, respondent No.1 will be paid her full salary payable according to Rules as Principal. This will be subject to clarification as Respondent No.1 has already joined her post from March, 1998. Whatever amount has been paid to her towards her salary during the aforesaid period will be adjusted from the amount to be worked out according to the present order. All arrears of salary will be paid from 9-12-1997 till 30-9-1999 after adjusting the amounts already paid during this period. The said exercise will be completed within six weeks from today. It is also made clear that the salary to be paid 1-5-1999 till the date of superannuation will be paid on monthly basis as per Rules.

(ii) It is further directed that this benefit will be available to respondent No.1 subject to her filing an undertaking in this Court that till the date of superannuation as her full salary as Principal is payable, she will not take up any teaching assignment in any other institution.

Subject to the aforesaid modifications, the Special Leave Petition is disposed of."

Before the Hon'ble Supreme Court the petitioner also clarified that she was not allowed to enter the school premises to perform her duties. On the position explained by the petitioner the Hon'ble Supreme Court issued directions vide order dated 29-4-1999 that the benefit of pay will be available to respondent No.1(petitioner) subject to her filing an undertaking in the Court that till the date of superannuation, as her full

salary as Principal is payable, she will not take up any teaching assignment in any other institution. These directions were issued under the circumstances that petitioner was not required to attend the school till the date of her retirement. The petitioner was never allowed to enter the school premises after 29-4-1999. In this regard petitioner made representations to the various authorities but of no avail.

On 4-9-1999, the petitioner received a letter from respondent No.3 in response to letter dated 28-8-1999 written by the petitioner wherein she was asked to exercise option regarding pension. On 6-9-1999, the petitioner tried to approach respondent No.3 to submit the forms filled up by her, exercising her option for pension, however, she was not allowed to enter the school premises. Therefore, the petitioner sent her option form to respondent No.3 under postal cover. The petitioner was, however, asked to file declaration on Non Judicial Stamp Papers for the purpose of Pension and Death-cum-Retirement Gratuity,which was a formality for the purpose of finalisation of the option. The same was filed by the petitioner on 11-11-1999 in the office of respondent No.4. The declaration was duly counter signed by the then District Education Officer. Copy of the letter dated 4-9-1999 and letter dated 6-9-1999 are attached as Annexures P5 and P6 and copy of the declaration filed by the petitioner is attached as Annexure P7. The petitioner attained the age of superannuation on 30-9-1999.

Thereafter, On 5-1-2000, the petitioner submitted another representation for fixing her pension. On 21-9-2000 and 13-11-2000, on the representations made by the petitioner, the higher authorities asked the respondent management to finalise pension of the petitioner. On 19-8-2000,

the petitioner got issued legal notice to respondent No.1 for directing the respondent-Management to release retiral benefits and pension of the petitioner, but of no avail. On 11-3-20003, Special Leave Petition filed by the petitioner, seeking the arrears of pay and consequential benefits from 17-9-1986 to 10-2-1998 was dismissed on the ground that it would amount to reviewing of the orders dated 29-4-1999 passed by the Hon'ble Supreme Court in Special Leave Petition filed by the respondent-Management. At the same time the respondent was directed to look into the complaints of the petitioner and to pass the appropriate orders.

On 27-9-2003, the petitioner received letter (Annexure P14) from respondent No.3 conveying that pension could not be released to her as she has failed to exercise her option for pension within four months from the date of joining after suspension as mentioned in Clause 4 of the Scheme. This was followed by an order dated 22-10-2003 issued by respondent No.4 (Annexure P15).

With this background, the petitioner has claimed that orders dated 27-9-2003 and 22-10-2003 are liable to be quashed as she is entitled for the retiral benefits in accordance with "Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992". Though the Hon'ble High Court did not mention in its judgment as to whether the petitioner was entitled for back wages or not, yet in view of Rule 15 it is clear that the petitioner is entitled to the benefit of pay and allowance at least for the purpose of pension and other retiral benefits but till date the respondent-Management has not fixed the pay of the petitioner by taking into consideration the increments and allowances, which the petitioner has earned during the period of her illegal termination. Despite

the repeated requests made by the petitioner to respondents No.2 and 3 to fix her pay and to disclose the same to her, so that she may be able to exercise her option but the respondents never clarified the position to the petitioner. Therefore, there is no delay on the part of the petitioner to exercise her option for pension. Hence, these impugned orders dated 27-9-2003 and 22-10-2003 (Annexures P14 and 15) are liable to be quashed.

The act and conduct of the respondent-Management has already been declared to be malafide by the Hon'ble High Court while disposing of the Civil Writ filed by the petitioner. No doubt that the petitioner joined her duties on 10-2-1998 but respondent No.3 ought to have asked to her to exercise her option for pension on or before 10-6-1998, on the contrary the first letter by respondent No.3, conveying her to exercise her option for pension is dated 6-4-1999 i.e. after a period of 14 months from resuming the duties. The respondents never clarified in their letter dated 6-4-1999 that option was to be exercised within four months from the date of receipt of a copy of this letter rather the petitioner was to convey her option on the following day. She was forced to face the litigation in one form or the other despite her resuming the duties. The proceedings with regard to her illegal termination became final on 29-4-1999, vide which the Hon'ble Supreme Court confirmed the decision passed by the Hon'ble High Court in Civil Writ Petition. Hence, there is no delay on the part of the petitioner to exercise her option for pension.

Clause 4 of Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme 1992 is reproduced as under:

"4.Exercise of option:- The option under sub-

clause (ii) of the second proviso to sub clause (1) of clause 3 shall be exercised in triplicate in writing in Form II so as to reach the District Education Officer as forwarded by the Head of the concerned School with the approval by the Managing Committee within a period of four months from the date of publication of this Scheme in the official Gazette:

Provided that:-

(i) In the case of employee who, on the date of publication of this scheme was abroad or on leave, the option shall be exercised within a period of four months from the date of taking the charge of his post;

(ii) Where an employee is under suspension, on the date of publication of the Scheme, the option shall be exercised within a period of four months from the date of his joining the duty;

(iii) An option once exercised shall be final and if a person fails to exercise his option for the Scheme within the specified period referred to above, it shall be deemed that he has opted for the Contributory Provident Fund benefits so envisaged in Rule 22 of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Rules, 1981 (hereinafter referred in the Contributory Provident Fund);

(iv) An employee who dies on or after the fifth day of February, 1987 and who could not exercise his option, the legal heir of such employee who is entitled to receive retirement benefits under the Scheme, shall

> *exercise option, subject to the condition that the legal heir shall have to deposit the amount received by the deceased employee or by him, as the case may be, under Contributory Provident Fund."*

In the written statement filed on behalf of the respondents, they admitted the factum of employment and litigation.

Taking shelter of Rule 4 that the petitioner did not exercise her right of option within four months of her resuming the duties, respondent No.4-The District Education Officer(Schools), Kapurthala rejected her claim for getting the pension as per the Rules pertaining to Privately Managed Recognized Aided Schools Retirement Benefits Scheme, 1992. A copy of the order passed by the District Education Officer dated 22-10-2003 is annexed as Annexure P15/R3/1. All the averments were denied and it was pleaded that she was allowed the revised scale of Rs.7000-10,980 and her pay was fixed at Rs.7,000/- w.e.f. 9-12-1997 as she was getting salary in the old scale less than Rs.7,000/-. Since the Management did not receive any option from the petitioner within the stipulated period, it was presumed that she has opted for contributory fund and not for pension scheme. It was with this background that the District Education Officer declined her claim of pension vide letter dated 22-10-2003 (Annexures P15/R3/1).

Respondents No.1 and 4 have almost taken the similar pleas.

Heard.

On behalf of the petitioner, it is contended by the learned counsel that the petitioner has been litigating right from the year 1985 till

1999 when the Hon'ble Supreme Court put a stamp on the reinstatement order in SLP on 29-4-1999. It is a case where the salary of the petitioner was not fixed by the Management on her resuming the duties. She had requested the Management-respondent No.3 to fix her salary under the revised pay scale so that she could opt for pension Scheme. The Management has brought the factum of pension Scheme in her knowledge for the first time vide letter dated 6-4-1999 (Annexure P2) i.e. after 14 months of her resuming the duties. This pension scheme was introduced during her absence from duty as Headmistress of school because of termination order. Infact the Government of Punjab vide its notification dated 10-2-1992 introduced the Retirement Benefit Scheme to the employee of Privately Managed Aided Schools notified as "Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme 1992", which was applicable w.e.f. 1-2-1987. Admittedly, the petitioner was not working in the school since her services were terminated in the year 1985. At the same time when the factum of pension Scheme was brought to the notice of the petitioner, she requested respondent No.3-Management to fix her salary. The matter was also referred to respondent No.4, who vide letter dated 22-06-1998 (Annexure P1) reprimanded the Management-respondent No.3 to fix the salary of the petitioner. The agony has not ended here. During the pendency of SLP before the Hon'ble Supreme Court vide order dated 29-4-1999 passed by the Apex Court, the petitioner has given an undertaking that she would not engage herself under any employment till superannuation i.e. 30-9-1999 and that she would be paid salary till her superannuation. With this background of not permitting the petitioner to exercise her option under the pension scheme, she moved a letter dated

8-9-1999 requesting the respondents to fix her pension under "Punjab Privately Management Recognized Aided Schools Retirement Benefit Scheme, 1992". She was not allowed to enter the school premises by the Management. She then sent her option form through under postal cover. Vide Annexure P-13, the Hon'ble Supreme Court in Civil Appeal No.6212 of 2001 dismissed the appeal of the petitioner with the observation that the respondent would look into the complaint made on behalf of the appellant by passing appropriate order and settle her case in accordance with law as expeditiously as possible. It was also observed that her pension case is not yet settled. It was, thereafter, that the matter was taken up by the District Education Officer, Kapurthala-respondent No.4, who under the shelter of Rule 4 of the "Punjab Privately Management Recognized Aided Schools Retirement Benefit Scheme, 1992" passed the impugned order (Annexure P15) that since the option was not received within four months from resuming the duties after reinstatement, she is not entitled to pension.

It is a case of an employee, who had suffered the agony of litigation from 1985 till December, 2006 i.e. for a period of more than 21 years but without any fault of her, she suffered denial of the pensionary benefits because of the callous, careless and un-cooperative attitude of the respondents. She was reinstated to service against the stiff opposition of the respondent-Management, who was not willing to see her presence in the school as well as failed to fix her salary after reinstatement. On her seeking certain queries from respondent No.3 with respect to her salary, wages and contributory fund, no reply was furnished to her by respondent No.3 so as to enable her to exercise her option. She could not be deprived of the pension scheme without there being any fault of her. Any employee under the

circumstances in which the petitioner has been put to undergo and to serve the school would hardly be able to exercise the option in time to claim pension within the Rules.

Learned counsel relied upon the judgment of **Sidh Nath Bhardwa**j Vs. **Union of India** 2005(1) SCT in which in para No.7, the Single Bench of Rajasthan High Court observed as under:

> *"It is well settled that pension is a right and the payment of pension does not depend upon the discretion of the Employer. Even if option in regard to pension is not exercised by the employee, he could not be deprived of the pension which otherwise would have been payable to him.*

Reference was taken from the Division Bench judgment of **Dhalu Ram** Vs. **RSEB, Jaipur**,1991 WLR (5) Raj 75, wherein para No.18, it is observed as under:-

> *.....Even if it is assumed that at some point of time the petitioners should be deemed to have opted for CPF scheme of the Board on account of their services being placed at the disposal of the Board the option was not voluntarily made and as such should not be allowed to defeat the claim of the petitioners. We are, therefore, of the clear view that the present petitioners could not have been deprived of their pensionary rights by thrusting upon them an option which was likely to take away their pensionary rights."*

In the judgment of **D.S.Nakara** Vs. **Union of India** AIR 1983 SC 130, it was held that criterion of date of enforcement of the revised

scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14.

So far as the arguments of the learned counsel for the respondents that the option to claim the pensionary benefits has not been exercised as per Rule 4 appears to be a great hardship to the petitioner, who became the victim of callous and un-cooperative attitude of the respondents throughout.

In the light of the aforesaid discussion, we are of the view that orders dated 27-4-2003 (Annexure P14) and 22-10-2003 (Annexure P15/R3/1) are set aside. The respondents are directed to fix the pension of the petitioner keeping in view the qualifying service rendered by her in the school from the date of her joining till her superannuation within two months from the date of receipt of a copy of this order and would pay the arrears with interest @ 6% per annum.

Before parting with the judgment, it is made clear that the observations made in this case may not be taken as a precedent because of the peculiar facts and circumstances arising in this case. Admittedly, she was not suffering any disciplinary proceedings before reaching the age of supernnuation except that she was sour in the eyes of the Management as is evident from the circumstances mentioned above. The pension is not a bounty payable on the sweet will of the respondent but a fundamental right to claim the benefits by the employee with respect to the services he/she had rendered to his/her employer during service carrier. It is not to be denied to an employee on technicalities. A low paid employee as in the case of present petitioner is normally a sufferer because of the meager resources

at her disposal. Her weeping eyes would always look for justice from the Courts, which is otherwise also her paramount right. A heavy duty is cast upon the Courts not to act as silent spectator but to come to the rescue of the litigant while dispensing justice.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

December 07, 2006
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